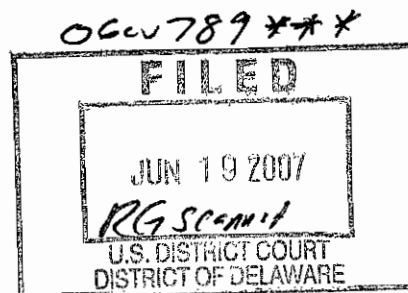


Please docket this traversal to answer and points and
authorities. A typed copy will be on the way soon
Thank - you

Lynn Harris

6-15-07



IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE

LYNN HARRIS

Partitioner,

V.

THOMAS CARROLL, Warden et. al.)

Respondants

Civ. Act. No. 06-789***

PETITIONER'S TRAVERSE TO ANSWER

CUSTODY

Petitioner agrees that he is in custody as stated in page 2, of the Answer. Petitioner claims that he is not in "lawfully" in custody because of the violations of his rights under the U.S. Constitution that are alleged in the "Grounds" section of his Petition for a Writ of Habeas Corpus. Except as expressly admitted herein, Petitioner denies each and every allegation of the Answer and re-affirms that his confinement is in violation of the Constitution.

STANDARD OF REVIEW

Petitioner agrees that the petition is governed by the AEDPA. However, Petitioner contends that the State Court unreasonably determined the facts, and that the facts which

Petitioner's Traverse

the State Court's "findings" are based on contradicted by clear and convincing evidence in the record under § 2254 (d)(2) for ground one's finding of "reasonable articulable suspicion" under Delaware statute 11 Del C § 1902 based on the 4th Amendment. The State Court's were objectively unreasonable in their fact finding on an intrinsic level. Taylor v Maddox 366 F3d 992 (9th Cir. 2004); Campbell v Vaughn 209 F3d 280, 286 (3rd Cir 2000) (facts implicit and explicit). The same unreasonable determination of facts by State Courts was performed in Petitioner's ground two Miranda and ground three Sufficiency of Evidence claims, the "Voluntariness" of confession is not an issue of fact presumed correct under habeas proceeding, but ultimate issue of voluntariness is a legal question requiring federal determination Miller v Fenton 474 US 104, 112 (1985) (citing) Leys v Twomey 404 US 477 (1972) and Mincey v Arizona 437 US 385, 398 (1978). To be given Plenary review. Rogers v Richmond, 365 US 534 (1961).

In the Sufficiency of Evidence, the proper review standard is that the Court views evidence most favorable to the verdict, "meaning that any "contradictory" or impeachment evidence will not be considered. Jackson v Virginia 443 US 317 (1979). Factual innocence is actual innocence, where no factual basis to support offense. Accord US v Garth 188 F3d 99, 107 (3rd Cir 1999) "As discussed, we look to non-Supreme Court cases not because the State Court was obliged to rely on them, but as evidence of what court would view as reasonable interpretation

Petitioners Traverse

of Supreme Court Law... Our canvass of decisions of our own and sister courts reinforces our view that [a] state court order... was [, or was] not an objectively unreasonable application of Supreme Court case law.

Fischetti v. Johnson, 384 F3d 140, 152 n.5 (3rd cir 2004).

EXHAUSTION

The State agrees that Petitioner has exhausted all the claims presented in his Petition for Habeas Corpus in the Answer.

PROCEDURAL ISSUES

The Petition is timely under AEDPA and there have been no state procedural defaults.

Petitioner Denies that Ground One's claim that police lacked reasonable articulated suspicion to stop him, is not cognizable in federal habeas, because the State provided him with Ineffective Assistance of Counsel, and this deficient counsel failed to perform an on the scene investigation of pertinent facts and failed to perform adequate legal research of the law in this area of the law. One point for example is that, counsel permitted the State ~~Supra~~ Trial Courts finding that an "anonymous tipster" is given a title "a concerned citizen" and allowed a suppression order to stand without a direct appeal to the State Supreme Court that has overturned these nonreliable and unidentified phone call tipsters unless the police officers

Petitioner's Traverse

perform their own independant observation and investigation into a suspects activities.

Petitioner denies he was provided with a "full oppertunity" to litigate this ground given the State Courts unreasonable determinations of facts and conclusions of law which are contrary to, and consist of an unreasonable application of clearly established U.S. Supreme Court law. And he was provided with deficient trial and appellant counsel, who did not have an understanding of either the pertinent facts of this case, nor knowledge in the law applicable to those facts. Restrictions on federal habeas review of state Fourth Amendment claims do not extend to Petitioner who also relies on an Ineffective Assistance of Counsel claim.

KIMMELMAN v. MORRISON, 477 US 365 (1986) (Counsel's failure to litigate a state prisoners Fourth Amendment claim competently)

INCORPORATION BY REFERENCE

"PLEASE FULLY INCORPORATE: THE ATTACHED POINTS AND AUTHORITIES TO PETITIONERS TRAVERSE TO ANSWER";

All Supporting Exhibits and Points and Authorities previously filed with this action.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein and in the documents incorporated by reference, Petitioner respectfully requests that the court:

1. grant the writ of habeas corpus, reverse Petitioner's

Petitioner's Traverse

conviction, and order a new trial;

2. appoint counsel for Petitioner; and

3. grant all other appropriate relief relevant to the grounds raised in this petition.

Respectfully submitted,

Dated: 6 15 07

Lynn Harris

Lynn Harris #

Delaware Correctional Center

1181 Paddock Road

Smyrna, DE 19977

Certificate of Service

I, Lynn HARRIS, hereby certify that I have served a true and correct cop(ies) of the attached: "Petitioners Traverse To Answer,"
and "Petitioners Points & Authorities ...Traverse" upon the following parties/person (s):

TO: James T. Wakley -DAG
Office of the Attorney General
820 N. French Street
Wilmington, DE 19801

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this 6 day of 15, 2007

Lynn Harris
Lynn Harris Pro-se
Del. Corr. Center
1181 Paddock Rd -
Smyrna, DE 19977

M. Lynn Harris
SB# 24744 UNIT 22
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977



United States District Court
Wilmington Delaware
Lock Box 18 "844" King Street
Clerk

19801

U.S.M.S.
X-RAY

